IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

Writ Petitio No.3796 of 2007

Andheri Manish Garden Coop.
Housing Society ..Petitioner

vs.

Amarjit Singh Arora and others ..Respondents

Shri R.G.Vasekar i/b M/s Uttangale and Co. for petitioner.
Shri J.S.Kini i/b Shri Suresh Dubey for respondents.

CORAM: S.C.DHARMADHIKARI J.
4th **July, 2007**

P.C.

1. The petitioner society has impugned the order passed by the lower Appellate Court reversing that of the Trial Court in a dispute filed by the petitioner society against the respondents.

2. Shri Kini, in all fairness has taken me through the dispute application and the prayers. The prayers in the dispoute are that the opponents/respondents in this petition should be directed to restore the residential flat on the ground floor to its original position, they be restrained from changing the user and/or division of the flat in question into any shop or other units without prior permission of the society so also they be restrained from alienating or encumbering the same.

3. It is not disputed before me by the petitioner that interim reliefs in terms of these prayers have been denied by the Trial Court and only direction that the Trial Court at the interlocutory stage has passed was to direct the respondents to pay a sum of Rs.67,360/- to the society within three months from the Trial Court's order.

4. The respondents impugned that order and direction before the lower Appellate Court in Appeal No.159 of 2006 which appeal has been allowed by the impugned order.

5. With the assistance of Shri Kini, I have gone through the impugned ordr and the reasons assigned therein are that appellant no.3 has been inducted into the premises by original appellant nos. 1 and 2 prior to formation of the society and to be precise in the year 1981. He has been enrolled as an associate member along with other appellants/opponents by the petitioner society. The society charges are being paid and that is not disputed by Shri Kini before me. The lower Appellate Court observed that non occupancy charges which have been claimed by the society should not have been directed to be paid at the interlocutory stage. The documents produced have been considered at the prima facie stage and the lower Appellate Court has observed that prima facie the society is not entitled to recover any non occupancy charges from the appellant.

6. The petitioner will have to establish that the premises are not occupied and, therefore, the members concerned must pay the non occupancy charges. Further, their quantum depends upon the resolutions of the society and By-laws. All these matters cnnot be gone into and conclusively decided at the interlocutory stage. The findings of the lower Appellate Court to my mind, do not suffer form any error apparent or perversity so as to call for any interference by this Court under Articles 226 or 227 of the Constitution of India. The petition is summarily dismissed.

(S.C.DHARMADHIKARI J.)